



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Governor

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November 13, 2017

Marva V. Cummings  
Director for District Licensing  
Office of the Comptroller of the Currency  
Northeastern District  
340 Madison Avenue, Fifth Floor  
New York, NY 10173

Re: Applications by the Bank of Tokyo-Mitsubishi UFJ, Ltd. (BTMU) and Mitsubishi UFJ Trust and Banking Corporation (MUTB) to convert the following state licensed branches to federal branches:

- BTMU's state-licensed branch located at 1251 Avenue of the Americas, New York, NY into a federal branch (OCC Control No. 2017-NE-FBA-Conversion StatetoFed-300364)
- BTMU's state-licensed branch located at 1221 Avenue of the Americas, New York, NY into a federal branch (OCC Control No. 2017-NE-FBA-Conversion StatetoFed-300373)
- MUTB's state-licensed branch located at 1221 Avenue of the Americas, New York, NY into a federal branch (OCC Control No. 2017-NE-FBA-Conversion StatetoFed-300384)

Dear Ms. Cummings:

I write in response to your November 1, 2017 letter regarding the above-captioned conversion applications. The November 1 letter requested that the New York State Department of Financial Services ("DFS") provide copies of the most recent examinations and "a copy of any pending or outstanding enforcement actions related to the subject branches" by November 7, 2017.

As detailed below, BTMU has been the subject of a number of significant enforcement and supervisory actions by DFS since 2013. In light of the severity of these actions and the fact that DFS had first learned of the conversion applications from BTMU on October 31, 2017, and then from the OCC on November 1, 2017, we advised the OCC on November 2 and again on November 7 that the five business day response time provided in your November 1 letter was insufficient and we requested until November 14, 2017 to provide you with a comprehensive package of information. We also advised the OCC that DFS was in the middle of an examination of the BTMU New York Branch and that the examination would need to be completed before DFS could provide the examination report to the OCC. Nonetheless, on the evening of November 7, 2017, just six days after informing DFS of the conversion applications and requesting information from DFS, the OCC notified DFS that the OCC had "conditionally approved" the conversion applications without receiving any input from DFS (the primary regulator of BTMU's New York state-licensed branch for decades) even though there was no apparent exigency that required the precipitous action. Subsequently, on the evening of November 8, the OCC informed DFS that the OCC made its approvals "effective" as of November 7. As the date of the OCC's approval is the

same date as DFS was requested to provide information, it appears that the OCC may not have intended to even consider DFS's comments prior to determining the applications. In any event, it appears that the OCC's approval was issued without the full factual record of BTMU's significant compliance deficiencies, given that DFS is in possession of substantial information that is not available from others and that BTMU has never sought a waiver of New York's Banking Law restrictions for it to provide DFS confidential supervisory information to the OCC.

Clearly, DFS was not given any reasonable opportunity to provide any input whatsoever with respect to the conversions and DFS has not issued any "no-objection" letter or otherwise indicated its consent to the conversions or any plan of remediation by the OCC. We are nonetheless providing the supervisory and examination, as well as enforcement, information requested in your November 1 letter. We note that BTMU, apparently in consultation with the OCC, demanded that DFS examiners exit BTMU's premises on November 7, 2017 and suspend all work with respect to the branches, including all on-going on-site examinations, and that DFS's independent consultant Kroll, who was working on DFS's enforcement investigation, exit BTMU's Tokyo premises on November 8, 2017. As DFS's supervisory and enforcement activities have been suspended unilaterally, the OCC as regulator is now fully responsible for the safety and soundness and compliance of BTMU's New York operations absent any change.

#### Summary of DFS's Enforcement Actions Against BTMU

On June 19, 2013, BTMU entered a Consent Order with DFS (the "2013 Order"). Through the 2013 Order, BTMU agreed that, from at least 2002 to 2007, BTMU employees in Tokyo acted systematically, on written instructions, to route U.S. dollar payment orders through BTMU's New York Branch after first removing information from wire transfer messages that could be used to identify the involvement of sanctioned parties.

Based on a historical transaction review report (the "HTR") issued by BTMU's consultant, PwC, and provided to its U.S. regulators, BTMU revealed it had processed approximately 28,000 U.S. dollar payments through New York worth close to \$100 billion involving Iranian, Sudanese and Burmese parties, including certain entities on the Specially Designated Nationals list issued by the U.S. Treasury Department's Office of Foreign Asset Control ("OFAC").

Further investigation by DFS resulted in a second Consent Order (the "2014 Consent Order"). On November 18, 2014, BTMU agreed that it had "misled the Department in connection with its understanding of BTMU's U.S. dollar clearing services on behalf of sanctioned Sudanese, Iranian, and Burmese parties," through the New York Branch. BTMU admitted that it had convinced its consultant, PwC, to remove language from the HTR that would have alerted BTMU's regulators to problems with the transactional data PwC had reviewed. Notably, the problematic data was generated by "Hotscan," the bank's sanctions filter in Tokyo.

Pursuant to the 2013 Consent Order and the 2014 Consent Order, an Independent Consultant approved by DFS – Kroll – was installed at BTMU for a period of up to 18 months beginning on December 1, 2015. In the Spring of 2017, as the Independent Consultant's 18-month term was close to expiring, BTMU, through its senior compliance personnel and outside counsel, acknowledged that the remediation required under the 2013 Consent Order and the 2014 Consent Order was not complete and offered to extend the Independent Contractor's term. BTMU

committed to the continuation of the Independent Consultant, while the parties were negotiating terms of a Supplemental Consent Order. Such discussions were ongoing during the time that BTMU apparently was preparing conversion applications without DFS's knowledge, and indeed the Independent Consultant was in Japan at the time DFS was informed on November 7 that the OCC had conditionally approved the applications.

As a result of the 2014 Order, BTMU agreed to relocate its U.S. BSA/AML and OFAC sanctions compliance programs to New York, with U.S. compliance oversight over all transactions affecting the New York Branch, including those transactions performed outside the U.S. that affect the New York Branch. BTMU agreed that the Independent Consultant would oversee, evaluate, and test the implementation of those programs, as well as the BSA/AML and OFAC sanctions compliance programs that operate outside the U.S. and relate to transactions affecting the New York Branch.

Over the past 20 months, the Independent Consultant has been reporting that BTMU has been taking actions that are inconsistent with complying with the Consent Order. Specifically, the Independent Consultant has reported:

1. A lack of transparency between the BTMU's home office in Tokyo and the Chief Compliance Officer in New York.
2. An overall lack of stability in the New York Branch's compliance staff, including a lack of retention of key compliance officers.
3. A failure by the BTMU home office to communicate issues to the Chief Compliance Officer that would impact, at a minimum, the Compliance Function of the New York Branch, but also BTMU network's transactions that affect the New York Branch;
4. The termination of a competent and cooperative Chief Compliance Officer around the same time that the Independent Consultant was issuing its March 1, 2017 Sanctions Governance Report addressing certain key BTMU failures.
5. A lack of transparency between the BTMU home office and the New York Branch in communicating with the Independent Consultant on important BSA/AML/Sanctions issues, including:
  - a. failures to disclose the full extent of dollar clearing data truncation issues on payment messages issued from approximately two dozen network locations of BTMU worldwide;
  - b. failing to provide critical (negative) internal audit report findings related to the failures of some "temporary fixes" applied by BTMU to correct the truncation issues globally; and,
  - c. the recent implementation of rules requiring all employees of the New York Branch to notify the Regulatory Liaison of the New York Branch to be present whenever a New York Branch employee was speaking with the Independent Consultant.

Overall, the Independent Consultant has concluded that BTMU has not adequately addressed several root causes of its compliance failures. BTMU failed to remediate the inadequate communication on U.S. sanctions compliance issues between the BTMU home office and the New York Branch. BTMU failed to identify thousands of Sudan-owned accounts in Tokyo until the Independent Consultant urged BTMU to investigate the accounts. BTMU failed to adopt a critical compliance culture in the bank's Global Compliance Division at the New York Branch. And BTMU failed to embrace a global U.S. sanctions compliance program run from the New York Branch as required under the 2014 Consent Order.

The Independent Consultant has further identified delays in responses by BTMU to its Compliance Report issued in July 2016. These shortcomings included: a delay and inadequacy in the development by BTMU of an action plan to address the report findings; the failure to timely and adequately provide a stable project management team to focus on and implement an action plan to remediate issues; the failure to provide for a timely and adequate hiring of effective staff to implement the action plan prospectively; and the failure to devise a technology component to address compliance deficiencies in technology and shift to an integrated compliance technology system for the entire BTMU network.

Yet further, the Independent Consultant has identified continuing compliance failures in Hong Kong, which has a "repeat transaction" program for certain high-risk clients in Chinese cities bordering North Korea. The repeat transaction program provides for not more but less scrutiny of these clients' transactions.

The misconduct identified above is not the end of the narrative. On November 8, 2017, we learned that BTMU was acting to prevent the Independent Consultant from identifying for DFS the most recently discovered bank misconduct. We assume the OCC did not direct such improper conduct.

#### Summary of DFS's Recent and Pending Examinations of BTMU

As we previously advised you, DFS was in the middle of examining the BTMU New York Branch when our examiners were asked to immediately suspend all such work and exit the building. The 2017 proposed preliminary ROCA roll-up of BTMU New York Branch is 3-2-4-2/3. This is an overall downgrade from 2016 with weaknesses in risk management and in compliance. The 2016 ROCA was 2-2-3-2/2.

An operational risk management target examination was conducted in May 2017 with an overall rating of Fair, reflecting insufficient progress by BTMU toward building an effective, transparent, and comprehensive operational risk management program.

In addition, a BSA/AML OFAC target examination was in process when DFS examiners were required to vacate BTMU's premises on November 7. On a preliminary basis, our examiners have noted a number of significant deficiencies, such as the delay in the implementation of a new "HotScan" OFAC sanctions software upgrade from the current one in use. The current version was noted to have alert issues, configuration limitations, and as noted by the Independent Consultant, truncation and data corruption issues. This is a repeat finding from June 28, 2016. On a related note, the New York Branch utilizes a different version of the sanctions software than is used in Tokyo, London Singapore, and other locations. This is also a repeat

finding. The “good guy list” at the New York Branch includes over 500,000 names and does not appear to be sufficiently reviewed for compliance with Branch standards. Even though the compliance department has increased staff, it has undergone substantial turnover. The Chief Compliance Officer position has changed three times in the past four years. The BSA Officer and Head of Financial Crimes has changed three times in the past four years. The OFAC Sanctions Compliance Officer has turned over four times in four years. We have also found that new employees are not fully receiving BSA/AML training as mandated by Branch policy. Finally, the head of Know Your Customer and Anti-Bribery & Corruption is the sole individual responsible for on-boarding high risk customers and, prior to the examination, had been operating without any policies or procedures covering this activity.

The OCC Should Not Have Approved  
the BTMU Conversion Applications Without DFS’s Input or No Objection

In describing the “Key Policies” of a State-to-Federal License Conversion, the Comptroller’s Licensing Manual for Federal Branches and Agencies (“Branch Manual”) states that “[g]enerally, the OCC will not consider a conversion application submitted while a material enforcement action is pending.” See Branch Manual at 46. This prudential rule reflects the unequivocal need to prevent a regulated entity from engaging in regulatory arbitrage. See Branch Manual at 47 (the “OCC may deny an application from a foreign bank wanting to convert its state license to a federal license or expand its federally licensed operations if ... applicant is trying to escape supervisory action by its current regulator.”)

Even when there is no pending enforcement action, the Branch Manual requires consultation with a state regulator and consideration of information provided by a state regulator :

In evaluating a proposal to convert an existing state-licensed foreign bank office to a federal branch or agency, the OCC draws heavily on information received from the office’s current U.S. supervisor. The OCC consults with the converting entity’s current U.S. supervisor to obtain information on the current condition of the converting entity and any corrective programs instituted by the supervisor.

See Branch Manual at 47. The OCC did not follow this procedure here.

These provisions in the Branch Manual reflect sound policy. The Federal Financial Institutions Examination Council (FFIEC) – of which the OCC and representatives of state banking supervisors are members – has established a framework for conversions (whether state-to-federal or federal-to-state) that addresses the need to prevent regulatory arbitrage in order to ensure that a regulated entity does not undermine appropriate supervisory actions. This framework, set forth in the FFIEC’s Statement on Regulatory Conversions, prohibits charter conversions when serious or material enforcement actions are pending (as was the situation here):

The members of the Federal Financial Institutions Examination Council (FFIEC), which include the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration (NCUA), collectively “the agencies,” and the State Liaison Committee which represents the State Banking

Authorities, have issued this statement to re-affirm that charter conversions or changes in primary federal regulator should only be conducted for legitimate business and strategic reasons. This furthers the FFEIC's responsibilities of maintaining uniform supervisory principles and standards for all regulated entities, regardless of chartering authority. Conversion requests submitted while serious or material enforcement actions are pending with the current chartering authority or primary federal regulator should not be entertained. Such requests could serve to delay or undermine appropriate supervisory actions that if left unresolved, could place the institution at greater risk of failure..... Before acting on any conversion request, the prospective supervisor should consult with the current supervisor to obtain information on any pending or outstanding supervisory actions...

FFEIC's Statement on Regulatory Conversions, *available at* [https://www.ffeic.gov/pdf/pr070109\\_statement.pdf](https://www.ffeic.gov/pdf/pr070109_statement.pdf). Again, the OCC entertained these conversion applications contrary to this longstanding framework.

Indeed, in addition to reflecting sound policy, the Branch Manual provisions and the FFEIC policy follow federal law. We believe that sections 35 and 3102(b) of Title 12 of the United States Code, and Section 612(d)(2) of the Dodd-Frank Act required that DFS not object to the conversion in order for it to proceed. DFS has not provided its "no-objection" to the BTMU conversion or any plan in connection with these requirements.

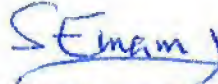
We must assume that the OCC was unaware of the information set forth in this letter as we would not expect the OCC to precipitously approve any conversion applications without the requisite facts or regulatory no-objection when there is a pending enforcement action and/or a pending examination. However, the precipitous nature of this approval – just six days from the OCC's notification to DFS, and without the primary state regulator's input regarding the safety and soundness and compliance concerns as to this institution – is without precedent and raises significant questions as to both the process and substance of the OCC's decision.

While DFS is reserving its rights in connection with the above, it is imperative that we – the DFS and the OCC – never allow any regulated entity to undermine our authority to enforce the applicable laws, particularly those relating to BSA/AML and OFAC compliance that are critical to the security of our nation and prevention of illegal activities. No regulator, state or federal, should permit its licensing authority to be abused in such a manner. The OCC and DFS should both be committed to the statutory provisions and regulatory guidance that prevent regulatory arbitrage, yet the exceedingly short time period and absence of a "no objection" by DFS that transpired here raises concerns on this very issue.

Please be advised that the discussion of the 2013 Consent Order, the 2014 Consent Order, and the recent examinations of BTMU in this letter reflect a decision by the Superintendent pursuant to New York Banking Law section 36(10), that the ends of justice and the public advantage will be served by the waiver of the privilege protecting this confidential examination material. This waiver by the Superintendent is limited to the specific facts set forth in this letter.

Please do not hesitate to contact me if you would like copies of any of the completed examination reports referenced above or if you would like to discuss any of the matters addressed in this letter.

Very truly yours,



Shirin Emami

Executive Deputy Superintendent – Banking

cc:

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